

Office of the State Public Defender Administrative Policies

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1.0 POLICY

- 1.1 The Office of the State Public Defender (OPD) may enter into agreements with outside counsel and non-attorney professionals to provide public defender services pursuant to the Montana Public Defender Act. These services are provided by independent contractors.
- 1.2 Contractor services are viewed as a cost-effective manner in which to ensure that public defender/indigent defense services are available in those areas where full time staff public defender services are unavailable, when conflict situations arise, to alleviate workload issues, or to provide services outside of OPD employees' expertise.
- 1.3 The OPD Contract Manager and Attorney Consultant, working in conjunction with the Division Administrators and regional managers, will determine the maximum number of contractors needed in a desired practice area(s)/region(s).

2.0 APPLICATION PROCEDURE

- 2.1 All current and prospective contractors must register as a vendor with the Montana Acquisition and Contracting System (eMACS) for submission of application documents and management of Memorandums of Understanding (MOUs).
- 2.2 For consideration as a potential contractor with OPD, prospective Contractors must apply through the eMACS system.
- 2.3 Contractors with a current MOU, or whose MOU has expired less than 30 days before the date they reapply, may apply for a new MOU without re-submitting any additional application materials.
- 2.4 New prospective Contractors, or former Contractors whose MOUs have expired more than 30 days prior to the date of application, will be required to complete and upload the following documents to the eMACS system, depending on provider type:
 - 2.4.1 **Attorneys** will be required to upload an Experience & Education form, found within the eMACS system, a current resume, current CLE certificate, proof of professional liability insurance, and a writing sample. **NOTE:** If seeking approval for appellate work, the writing sample **must** be an appellate brief.
 - 2.4.2 **Investigators** will be required to upload an Experience and Education form, found within the eMACS system, a current resume, and a copy of their current professional license(s).

- 2.4.3 **Mental Health Providers** will be required to upload an Experience and Education form, found within the eMACS system, a current resume, a copy of their current professional license(s), and a **redacted** example of each type of report they anticipate providing for OPD clients.
- 2.4.4 **Administrative Support Staff** will be required to upload an Experience and Education form, found within the eMACS system, and a current resume.
- 2.5 Once an application has been submitted by a prospective contractor it will be reviewed by the Contract Manager, the Attorney Consultant or the Mental Health Consultant, as appropriate.
- 2.6 If the Contract Manager and/or the appropriate consultant determines that the applicant meets OPD's qualifications and there is a need for services in the practice area(s) and region(s) in which the applicant wishes to practice, the applicant will be offered an MOU.
- 2.7 The OPD Contracts Program shall notify relevant OPD staff when a new contractor is approved and able to accept assignment from OPD. The OPD Contracts Program shall not advertise for the services of a specific contractor.
- 2.8 Cases will be assigned to Contractors as follows:
 - 2.8.1 **Attorneys:** The Regional Deputy Public Defender (RDPD) will assign non-conflict cases, the Appellate Defender Division Administrator shall assign appellate cases, and the Conflict Defender Division Administrator or designee will assign conflict cases, ensuring that the contractor has the qualifications to handle the specific type of case being assigned.
 - 2.8.2 **Investigators:** Cases shall be referred to Investigators by attorneys seeking investigative support services for assigned cases. Investigative referrals are subject to pre-approval.
 - 2.8.3 **Mental Health Providers:** Cases shall be referred to Mental Health Providers pursuant to the [OPD Mental Health Protocol](#). Mental Health Professional referrals are subject to pre-approval and shall be reviewed by the Mental Health Consultant.
 - 2.8.4 **Administrative Support Staff:** Cases shall be referred to Administrative Support Staff by attorneys seeking administrative support for assigned cases. Administrative Support Staff referrals are subject to pre-approval.
- 2.9 OPD may determine that a flat fee contract, covering a certain case type and/or geographical region and/or court, is in the best interests of the agency. To receive a flat fee contract, a contractor must have and maintain a current MOU with the agency.
- 2.10 In accordance with 47-1-121 (6), MCA, the Public Defender Division Administrator, RDPDs, Appellate Defender Division Administrator, and Conflict Defender Division Administrator shall supervise contracted personnel for their respective offices and ensure compliance with OPD Policies, OPD Standards, OPD procedures, and the terms of the contractor's MOU.

3.0 STANDARDS AND POLICY COMPLIANCE

- 3.1 Prospective contractors must acknowledge that they have read and agree to abide by the following OPD controls:
 - 3.1.1 [OPD Practice Standards](#)
 - 3.1.2 [OPD Policies](#)
 - 3.1.3 [OPD Mental Health Protocol](#)
 - 3.1.4 [OPD Contractor Compensation Schedule](#)
 - 3.1.5 [OPD Pre-Approval and Claims Procedure](#)

- 3.2 Prospective contactors must acknowledge they will abide by all ethical and practice standards of their profession.
 - 3.3 Contractors are required to complete continuing education training annually, as determined by the agency, and to provide verification if requested.
- 4.0 CONTRACT COUNSEL: DURATION OF REPRESENTATION**
- 4.1 Following sentencing, it is the responsibility of contract counsel to explain appeal options to the client, including the applicable timeframe during which the decision to appeal must be made. It is the client's decision whether or not to appeal.
 - 4.2 If the client chooses to appeal, contract counsel will refer the case to the Appellate Defender Division per the procedure on the OPD website.
 - 4.3 Contract counsel shall not move to withdraw from representing a client until the case has been referred to the Appellate Defender Division, or until the appeal time on the case has expired.
 - 4.3.1 Client retains the option to change the decision to proceed with an appeal at any time until the appeal time has expired.
- 5.0 CONTRACTOR ACCESS TO CASE MANAGEMENT SYSTEM**
- 5.1 OPD may determine contractor access to the case management system is in the agency's and client's best interest.
 - 5.2 OPD shall adopt controls that ensure only approved contractors with current MOUs may access the case management system. Further, OPD shall ensure any access granted to contractors is restricted to only their involved cases.
 - 5.3 OPD may suspend or revoke a contractor's access to the case management system if:
 - 5.3.1 their MOU expires;
 - 5.3.2 they have misused their case management system access;
 - 5.3.3 they have failed to comply with any term of the MOU, with OPD Policies, Standards, or Procedures, or the Access to OPD Case Management System Acknowledgment; or if,
 - 5.3.4 OPD determines continued access is no longer in the best interests of the client or the agency.
- 6.0 PAYMENTS FOR SERVICES**
- 6.1 OPD shall directly pay contractors for services rendered.
 - 6.2 Contract services shall be paid according to the [Contractor Compensation Schedule](#) set by the Director, which is subject to change.
 - 6.3 Pre-approved travel expenses shall be paid at the state travel rates.
 - 6.4 Other expenses shall be paid if pre-approved per [OPD Policy 125](#), Pre-Approval of Client Costs. All third-party costs will be paid directly to the vendor and not reimbursed to the contractor, except in extraordinary circumstances.
- 7.0 PAYMENT PROCEDURES**
- 7.1 All Contractors shall comply with [OPD Pre-Approval and Claims Procedure](#), which sets forth the process and procedures for submitting pre-approvals and claims.
 - 7.2 Unless otherwise directed by OPD Staff, Contractors shall submit all claims through OPD's Online Claims Portal. Paper claims will not be accepted except in extraordinary circumstances.
 - 7.3 Monthly Hourly Claims shall include all work performed within a given region and conflict type (i.e. Region 4 Non-Conflict). All hourly claims must be separated into Provider Hours and Travel Hours and shall be broken into one-tenth of an hour

increments (.1 hours). All claims must include a detailed invoice for each case which includes the OPD CaselD#.

- 7.4** Work done pursuant to a pre- or supplemental-approval may not exceed the amount of the pre- or supplemental-approval. Post-approval of client costs will not be granted except in extraordinary circumstances.
- 7.5** Monthly claims are due at midnight on the last day of the month following service. For example, claims for May are due at midnight on June 30. Late claims will not be approved, absent extraordinary circumstances.
- 7.6** Claims will be automatically routed to the appropriate supervising attorney for approval.
- 7.7** Claims will be paid within 30 days of receipt of a complete, approved claim. The 30-day payment clock will stop whenever a claim is disputed, audited, or contains errors, and will restart upon resolution of these issues.

8.0 CLOSING

Questions about this policy should be directed to:

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